

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WAL-MART STORES, INC.,)
a Delaware corporation,)
)
Plaintiff,)
)
vs.) Cause No. 4:09CV0870 AGF
)
PDX, INC., a Texas corporation,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court¹ on Defendant's Motion for Leave to File a Jury Demand. The action was removed from state court by Defendant based on this Court's diversity jurisdiction. In its complaint, Plaintiff seeks indemnification from Defendant for a lawsuit Plaintiff settled in 2004. For the reasons set forth below, Defendant's motion shall be granted.

BACKGROUND

Plaintiff filed this case on March 3, 2009, in the Circuit Court of the County of St. Louis, Missouri. A copy of the petition was served on Defendant on May 8, 2009. Defendant removed the case to this Court on June 5, 2009, and filed an answer on June 12, 2009, which did not include a jury demand. A scheduling conference was held on September 9, 2009, and on that date a Case Management Order was issued setting a discovery completion date of September 1, 2010, and a trial date of February 14, 2011.

¹ The parties have consented to the exercise of authority by the undersigned United States Magistrate Judge under 28 U.S.C. § 636(c).

Defendant's Motion for Leave to File a Jury Demand was filed on September 14, 2009. Plaintiff argues that Defendant's jury demand is past due, and notes that Defendant provided no reason for its nearly three-month delay in requesting a jury trial. Plaintiff did not assert any prejudice that would result from granting Defendant's motion.

DISCUSSION

Plaintiff does not dispute that this case involves issues that would give Defendant the right to a jury trial under Rule 38(a) of the Federal Rules of Civil Procedure. However, under Rule 38(b), the demand is to be made within the ten-day period following service of "the last pleading directed to the issue," and failure to do so in the case waives that right. F.R.Civ.P. 38(d). A party may seek relief from such a waiver by filing a motion under Rule 39(b). This section states in relevant part that "the court may, on motion, order a jury trial on any issue for which a jury might have been demanded."

The Eighth Circuit has held that Rule 38(b) jury trial waivers are subject to "lenient modification at the trial judge's discretion." Williams v. Farmers & Merchants Ins. Co., 457 F.2d 37, 38 (8th Cir. 1972). District courts "ought to approach each application under Rule 39(b) with an open mind . . . and jury trials ought to be liberally granted when no prejudice results." Littlefield v. Fort Dodge Messenger, 614 F.2d 581, 585 (8th Cir. 1980). District courts in this Circuit generally have considered five factors in determining whether to grant a late request for a jury trial, including (1) whether the issues to be tried are jury issues; (2) whether granting the motion would disrupt the schedule of the court or the adverse party; (3) the degree of prejudice to the opposing party; (4) the length of delay resulting from the untimely request for a jury trial; and (5)

the reason offered for the untimely request. See, e.g., Harrington v. Wilber, 384 F. Supp. 2d 1321, 1324 (S.D. Iowa 2005); Pennington v. Allstate Ins. Co., No. 95-0707-CV-W-6, 1996 WL 476007, at *2 (W.D. Mo. Aug. 18, 1996).

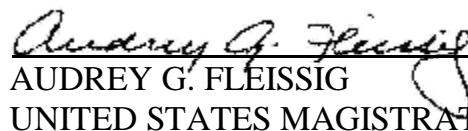
Here, the Court finds no persuasive reason to deny Defendant's motion. Granting Defendant's motion will not disrupt the schedule of the Court or cause significant delay, as the trial date is set for February 14, 2011, over 16 months away. Plaintiff has not alleged any prejudice or shown any detrimental reliance that has resulted or will result from Defendant's failure to demand a jury trial in a more timely manner. Thus, even though Defendant has not provided a reason for its three-month delay, the Court will grant Defendant's motion.

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Defendant's Motion for Leave to File a Jury Demand is **GRANTED**. [Doc. #10]

Dated this 7th day of October, 2009.


AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE